

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEWARK, NEW JERSEY**

Plaintiff (s)

ELEANOR M. COONEY, As Executrix
of the Estate of Daniel T. Cooney, Jr.,
Deceased, and ELEANOR M. COONEY,
ELEANOR SCHIANO, HELEN E. COONEY
MUELLER, DANIEL T. COONEY, III and
ROBERT COONEY, individually,

DOCKET NO.: 04-CV-1272 (JLL)

vs.

Defendant (s)

ROBERT E. BOOTH, JR., M.D., ARTHUR R.
BARTOLOZZI, M.D., and 3B ORTHOPAEDICS,
P.C./PENN ORTHOPAEDICS and ROBERT E.
BOOTH, JR., M.D., ARTHUR R. BARTOLOZZI,
M.D., 3B ORHOPAEDICS, P.C./PENN
ORTHOPAEDICS, Personally.

CIVIL ACTION

**PLAINTIFFS' APPENDIX IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT AND IN OPPOSITION TO DEFENDANTS' MOTION.**

Helen E. Cooney Mueller (HCM 4226)
Attorney for Plaintiffs
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THIS IS NOT A BILL

Explanation of Your Medicare Part B Benefits

DANIEL COONEY
8 ERLI ST
WAYNE NJ 07470-4303

Summary of this notice dated April 20, 1998

Total charges:	\$ 6,460.00
Total Medicare approved:	\$ 1,818.92
We paid your provider:	\$ 1,455.14
Your total responsibility:	\$ 363.78

Your Medicare number is: 058-07-6990A

Your provider accepted assignment

Details about this notice (See the back for more information)

BILL SUBMITTED BY: Allegheny University Of Pitt
Mailing Address: The Orthopaedic Hosp
 Po Box 820447
 Phila PA 19182

<u>Date</u>	<u>Services and Service Codes</u>	<u>Charges</u>	<u>Medicare Approved</u>	<u>See Notes Below</u>
Feb 26, 1998	Control number 21-8079-077-12-00 Arthur Bartolom M.D. 01 Total knee replacement [27447-GCLT]	\$ 6,460.00	\$ 1,818.92	a

Notes:

- a This is the maximum approved under the Medicare fee schedule for this service.

IMPORTANT: If you have questions about this notice, call the toll-free Medicare Consumer Help Line at 1-800-746-5620, or visit us at 1800 C Street, SW, Suite 340, Washington, DC 20004. You can also write to us at P.O. Box 1121, Washington, DC 20547. To appeal our decision, write to us at Medicare Hearings and Appeals, P.O. Box 1121, Washington, DC 20547. See page 62 on the back.

Atlas 3.30
Graduate Hospital

MRN	Visit ID	Admit Date	Disch Date	Proc Code	Proc Date	Proc Descr	Px Descr	Px Date
791384	3634458	02/26/1998	03/03/1998	8154	02/26/1998	Total Knee Repl	65120	Robert Booth
798998	3648151	02/26/1998	03/01/1998	8154	02/26/1998	Total Knee Repl	65122	Arthur Bartolozzi
799000	3648169	02/26/1998	03/02/1998	8154	02/26/1998	Total Knee Repl	65122	Arthur Bartolozzi
799005	3648201	02/26/1998	03/01/1998	8154	02/26/1998	Total Knee Repl	65128	David Nazarian
790971	3648219	02/26/1998	03/02/1998	8154	02/26/1998	Total Knee Repl	65128	David Nazarian
798729	3648227	02/26/1998	03/01/1998	8154	02/26/1998	Total Knee Repl	65128	David Nazarian
644895	3648235	02/26/1998	03/01/1998	8154	02/26/1998	Total Hip Repl	65128	David Nazarian
798011	3648250	02/26/1998	03/01/1998	8154	02/26/1998	Total Knee Repl	65122	Arthur Bartolozzi
793986	3648268	02/26/1998	03/01/1998	8154	02/26/1998	Total Knee Repl	65122	Arthur Bartolozzi
799029	3648334	02/26/1998	03/03/1998	8154	02/26/1998	Total Knee Repl	65120	Robert Booth
799034	3648342	02/26/1998	03/03/1998	8154	02/26/1998	Total Knee Repl	65120	Robert Booth
456705	3648441	02/26/1998	03/02/1998	8154	02/26/1998	Total Knee Repl	65120	Robert Booth
453847	3648508	02/26/1998	03/04/1998	8154	02/26/1998	Total Knee Repl	65128	David Nazarian
799565	3651041	02/26/1998	03/03/1998	8154	02/26/1998	Total Knee Repl	65120	Robert Booth
799631	3651082	02/26/1998	03/01/1998	8154	02/26/1998	Total Knee Repl	65122	Arthur Bartolozzi
799584	3651090	02/26/1998	03/02/1998	8154	02/26/1998	Total Knee Repl	65120	Robert Booth
798632	3648105	02/26/1998	03/03/1998	8154	02/26/1998	Total Knee Repl	65120	Robert Booth
782873	3648144	02/26/1998	04/08/1998	8154	02/26/1998	Total Knee Repl	65122	Arthur Bartolozzi

4/22/2011 11:44 AM

2

Page 1 of 1

12 JUL 00 1420

JULY 1998 OPERATING ROOM SCHEDULE

FOR THURSDAY, FEB 26, 1998

<u>OP TIME</u>	<u>PATIENT'S NAME</u>	<u>OP. OPERATIONS SCHEDULED</u>	<u>DOCTOR</u>	<u>ANEST.</u>	<u>EQUIPMENT</u>	<u>Comments</u>
11 07:00 018- WILLIAMS,BRIAN 13:00 018- MASTER,CHRISTINA 15:30 018- CIRFIELD,MICHAEL		40 RT KNEE(S) SURGICAL ARTHROSCOPY 31 LT KNEE(S) SURGICAL ARTHROSCOPY, ACL RECONSTR W/ ALLCRAFT (6 LATERAL MENISCAL REP.) 30 RT KNEE(S) SURGICAL ARTHROSCOPY, ACL RECONSTR W/ ALLCRAFT	Baldwin,F. Greene,J. Greco,J.	GEN GEN GEN		
12 07:30 018- CONDOR,MICHAEL JR. 09:30 018- BIPIANO,MICHAEL 11:00 018- SHELTON,JAMES V.		52 RELEASE (GUTTER CANAL ANTERIOR TRANSPOSITION ULNAR NERVE AT ELBOW) 41 OPEN LT ROTATOR CUFF REPAIR 51 LT TRIGGER FINGER RELEASE (LONG & RING FINGERS)	Trager,S Trager,S Trager,S	A/C A/C A/C		
13 07:00 018- KOMALAKI,EDWARD R. 08:00 018- DARBY,ROBERT J.		52 LT KNEE(S) SURGICAL ARTHROSCOPY 50 RT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) LT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER)		8/8/0/0 8/8/0/0	A/C A/C	
14 07:00 018- CATZ,ADA 12:00 018- PHILLIPS,MARGARET		78 RT TOTAL KNEE ARTHROPLASTY (18-PS) 73 RT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) LT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER)		8/8/0/0 8/8/0/0	A/C A/C	
15 07:00 018- MARTIN,CHESTER W. 09:00 018- COONEY,DANIEL 11:00 018- BELZINGARD,KATHLEEN 16:00 018- WEET,JOHN J.		69 LT TOTAL HIP ARTHROPLASTY (TAPELOC) 62 LT TOTAL KNEE ARTHROPLASTY (18-PS) 59 RT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) LT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) 29 RT TOTAL HIP ARTHROPLASTY (TAPELOC, S-S)		8/8/0/0 8/8/0/0 8/8/0/0 8/8/0/0	A/C A/C A/C A/C	
16 07:00 018- DEAME,CHARLES C 00:00 018- DORAHUE,MARGARET 12:00 018- KOZAK,MARY JEAN		67 LT TOTAL KNEE ARTHROPLASTY (18-PS) 79 RT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) LT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) 59 RT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) LT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER)		8/8/0/0 8/8/0/0 8/8/0/0	A/C A/C A/C	
17 07:00 018- WILDFEIN,CECILIA 09:00 018- WEINER,PEARL J 13:00 018- ROMSTROM,HELEN R.		79 LT TOTAL KNEE ARTHROPLASTY (18-PS) 77 RT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) LT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) 77 RT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) LT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER)		8/8/0/0 8/8/0/0 8/8/0/0	A/C A/C A/C	
18 07:00 018- REILLY,CATHERINE 09:00 018- HERMITT,MARY KAY 11:00 018- OLINN,WMILLIAN 13:00 018- BUTTEL,WALTER J.		69 LT TOTAL KNEE ARTHROPLASTY (18-PS) 57 RT TOTAL KNEE ARTHROPLASTY (18-PS, CCK) 61 REV RT TOTAL KNEE ARTHROPLASTY (CCK, LONG STEM, CELL SAVER) 76 RT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER) LT TOTAL KNEE ARTHROPLASTY (18-PS, CELL SAVER)		8/8/0/0 8/8/0/0 8/8/0/0 8/8/0/0	A/C A/C A/C A/C	

TU

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ATTORNEYS AT LAW

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April 19, 2005

Via Facsimile and First Class Mail

Helen E. Cooney Mueller, Esquire
Cooney & Mueller
11 Susan Avenue
Wayne, New Jersey 07470

RE: Cooney v. Booth, M.D., et al.
Docket No.: C-04-1272 (JLL)
Our File No.: 55034

Dear Mrs. Cooney-Mueller:

Please allow this letter to confirm our telephone conversation of yesterday afternoon, April 18, 2005, during which you agreed to extend the time period for defendants to produce the face-sheets regarding defendants' insurance policies for the years 1998 and 2001-2005 until Wednesday, April 20, 2005. I expect to receive these documents tomorrow and I will immediately forward them to your attention upon my receipt of them.

As for your request for copies of the top portion of the intra-operative reports for all surgeries performed by Robert E. Booth, Jr., M.D. and Arthur R. Bartolozzi, M.D. on February 26, 1998, with personal identifying information redacted, please be advised that my clients are not in possession of any such documents. If these documents still exist, they are most likely in the possession and control of Graduate Hospital.

Finally, with respect to your request for "surgeon's operation notes" for Daniel Cooney, please be advised that our clients have confirmed for me that no such documents exist.

Should you have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,


PAUL E. PEEL

NOT PRECEDENTIAL

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 03-2652

ELEANOR M. COONEY, As Executrix of the
Estate of Daniel T. Cooney, Jr., Deceased;
ELEANOR M. COONEY; ELEANOR SCHIANO;
HELEN B. COONEY MUELLER; DANIEL T. COONEY, III;
ROBERT COONEY INDIVIDUALLY,

Appellants

v.

ROBERT E. BOOTH, JR.; ARTHUR R. BARTOLOZZI;
DAVID MCHUGH, (FICTITIOUS FIRST NAME); DAVID G. NAZARIAN;
JOHN DOE, (FICTITIOUS NAME); BOOTH, BARTOLOZZI, PENN ORTHOPEDICS;
MARK MANTELL; RECOVERY ROOM STAFF;
JANE DOE, JOHN ROE, ET AL, (FICTITIOUS NAMES);
GRADUATE HOSPITAL, (FORMERLY ALLEGHENY GRADUATE HOSPITAL);
PENNSYLVANIA HOSPITAL; ROBERT E. BOOTH, JR.; MARK MANTELL,
PERSONALLY;
BOOTH, BARTOLOZZI, BALDERSON, PENN ORTHOPEDICS, CORPORATION;
DENNIS MCHUGH

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civ. No. 00-cv-01124)
District Judge: Honorable Eduardo C. Robreno

Submitted Under Third Circuit LAR 34.1(a)
March 22, 2004

Before: ROTH, AMBRO AND CHERTOFF, CIRCUIT JUDGES

(Filed: September 7, 2004)

OPINION

ROTH, Circuit Judge

Appellants appeal from the January 31, 2003, order of the District Court denying their Rule 60 (b) motion, the May 13, 2003, order denying their recusal motion, and the June 5, 2003, order denying their motion to reconsider the January 31, 2003, order. For the reasons that follow, we will affirm.

The background and factual allegations underlying this cause of action are well known by the parties and need not be detailed here. Briefly, appellants' decedent, Daniel T. Cooney, Jr., consented to have Dr. Robert Booth perform knee replacement surgery. Dr. Arthur Bartolozzi assisted Dr. Booth. After the surgery, Cooney's foot became discolored and no pulses were palpable. Corrective vascular surgery was performed. Cooney died as a result of secondary complications from the vascular surgery.

Cooney's estate and individual family members (appellants in this case) filed suit against the doctors involved and a number of other medical personnel and entities. On March 8, 2001, the District Court granted summary judgment in favor of Dr. Bartolozzi.¹ Appellants then voluntarily dismissed all remaining defendants except Dr. Booth. On

¹ The same order also granted summary judgment in favor of defendant Nazarian.

March 22, 2001, a jury returned a verdict in favor of Dr. Booth. We affirmed.

In June 2002, appellants filed a Rule 60 (b) motion to set aside the order granting summary judgment in favor of Dr. Bartolozzi and the jury verdict in favor of Dr. Booth. In the motion, appellants asserted that the judgments should be set aside because Dr. Booth and Dr. Bartolozzi committed fraud upon the court. The basis for the assertion of fraud was, inter alia, that appellants recently discovered that Dr. Booth's trial testimony conflicted with Dr. Bartolozzi's deposition testimony on the issue of whether Dr. Booth performed the critical aspects of Cooney's surgery. The District Court denied the motion, reasoning that it was untimely filed more than one year after the entry of the judgments, and that, even assuming that the motion was timely, it lacked merit.

Appellants subsequently filed a motion for reconsideration of the order denying their Rule 60 (b) motion along with a motion for recusal requesting that the District Judge recuse himself and vacate the order denying the Rule 60 (b) motion. The District Court denied the recusal motion by order entered May 13, 2003, and denied the reconsideration motion by order entered June 5, 2003. This appeal followed.

The District Court properly denied appellants' motions. We agree with the District Court that the Rule 60 (b) motion was untimely, see Fed. R. Civ. P. 60 (b), except for the allegation of fraud against the court, which we find to be without merit.

Despite appellants' assertions, Rule 60 does not provide a good cause exception for untimely filings and, even if it did, appellants' assertions fail to show good cause.

With respect to the order denying appellants' recusal motion, the District Court did not abuse its discretion in denying the motion. See Jones v. Pittsburgh Nat'l. Corp., 899 F.2d 1350, 1356 (3d Cir. 1990). Simply put, we find nothing in the record that suggests personal bias or prejudice by the District Court that would preclude fair judgment. See 28 U.S.C. § 144; U.S. v. Furst, 886 F.2d 558, 582 (3d Cir. 1989). Nor do we perceive any facts from which a reasonable person would conclude that the impartiality of the District Court might reasonably be questioned. See 28 U.S.C. § 455(a); Edelstein v. Wilentz, 812 F.2d 128 (3d Cir. 1987). To the extent that appellants challenged the District Judge's handling of certain motions, appellants should have pursued their concerns on direct appeal from the final order. Unfavorable rulings do not form an adequate basis for recusal. See SecuraComm Consulting, Inc. v. Securacom Inc., 224 F.3d 273, 278 (3d Cir. 2000).

The District Court likewise did not abuse its discretion in denying appellants' reconsideration motion. Appellants failed to show an intervening change in controlling law, new evidence, clear error of law or fact, or manifest injustice. See Max's Seafood Café v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999). Consequently, their motion was properly denied.

We have considered all of appellants' arguments and find them unpersuasive. Accordingly, we will affirm the orders of the District Court.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ELEANOR M. COONEY, AS : CIVIL ACTION
EXECUTRIX OF THE ESTATE OF : NO. 00-1124
DANIEL T. COONEY, JR., :
DECEASED, et al., :
:

plaintiff, :
:

v.
:

ROBERT E. BOOTH, JR., MD., :
et al., :
:

Defendants. :
:

FILED JAN 30 2003

OPCEE

AND NOW, this 30th day of January, 2003, upon
consideration of the motion of plaintiff Eleanor Cooney et al. to
set aside judgment et seq. (doc. no. 110), the response of
defendant Robert E. Booth, Jr., et al. (doc. no. 112), the
memorandum of law by plaintiff Cooney et al. (doc. no. 116), the
response by defendant Booth et al. (doc no 117), and the reply
memorandum of plaintiff Cooney et al. (doc. no. 119), and after a
hearing, it is hereby ORDERED that the motion is DENIED.¹

First, the motion to set aside the judgment is
untimely. Under Rule 60(b)(3), a motion to set aside the
judgment on the basis of fraud shall be filed within one year of
the entry of the judgment. Fed. R. Civ. P. 60(b)(3). It is
undisputed that the instant motion was filed more than one year
from the entry of judgment. Nor is petitioner entitled to
proceed under subsections (2) or (6) in that the basis for the
allegations in the motion, i.e., the conflict between the
testimony of Dr. Booth at trial and Dr. Bartolozzi at deposition,
was either known or should have been known to petitioner, since
petitioner had a transcript of Dr. Bartolozzi's deposition at the
time of trial. See Fed. R. Civ. P. 60(b)(2) (newly discovered
evidence previously undiscernable by due diligence); ~~See, RJ~~ **ENTERED**

JAN 31 2003

CLERK OF COURT

Exhibit "E"

AND IT IS SO ORDERED.


EDUARDO C. ROBRENO, J.

Civ. P. 60(b)(6) (any other reason justifying relief).
Second, assuming that the motion is timely, it fails because petitioner cannot show the existence of fraud on the court, or the commission of perjury by Dr. Booth. The gist of petitioner's claim is that Dr. Booth's trial testimony is in conflict with Dr. Bartolozzi's deposition testimony on the issue of whether Dr. Booth performed the critical aspects of Mr. Cooney's surgery. Assuming that this is so, an inconsistency between the testimony of two witnesses does not amount to fraud and is not proof of perjury. See Kutzner v. Johnson, 242 F.3d 605, 609 (5th Cir. 2001) ("Conflicting or inconsistent testimony is insufficient to establish perjury."); Becker v. Gress, Nos. 92-36681, 93-35291, 1994 WL 142968, at **2 (9th Cir. Apr. 20, 1994) ("Inconsistent testimony by a witness is not the type of fraud upon the court that could reopen a judgment."). Moreover, as stated above, at the time of trial, petitioner and trial counsel had in their possession Dr. Bartolozzi's deposition testimony. Yet, petitioner and counsel, for reasons of trial strategy or as a result of counsel's error, forwent the opportunity either to confront Dr. Booth on this point while on the stand, or to call Dr. Bartolozzi as a trial witness (who was located within the subpoena power of the court). Having forgone the opportunity at trial to place at issue Dr. Booth's contention that Dr. Bartolozzi was involved in critical aspects of Mr. Cooney's surgery, petitioner may not now collaterally impeach the jury's verdict.

Finally, petitioner raises serious issues concerning Dr. Booth's professional conduct in other matters unrelated to the treatment of Mr. Cooney. The court by this decision offers no views on whether Dr. Booth's conduct, as alleged, may have run afoul of federal or state law, or any professional standards applicable to him. These judgments are to be made, if at all, by appropriate authorities in other forums.

Upon review of the record, the court is left with the firm impression that petitioner received a fair and full hearing of her claims in this case at trial and on appeal.

GRADUATE

PHILADELPHIA, PA 19146

OPERATING ROOM

NKD

INTRAOPERATIVE RECORD

ADDRESSOGRAPH

DATE 02-26-98

ROOM NUMBER 77

IN ROOM 1426

PROCEDURE START TIME 1511

OUT OF ROOM 1147

PROCEDURE END TIME 1604

SURGEON: A. BARTHOLOMEW 1ST ASSIST D. McHugh DO

2ND ASSIST: S.

SURGEON: J. HARRIS MD PA: S.

OTHER: D. Holmes O.T.

ANESTHESIOLOGIST: J. WILLIAMS CRNA: D. Schuyler Meeker

RESIDENT: S.

ANESTHETIC: GENERAL MAC REGIONAL LOCAL

LOCAL AGENT: S. AMOUNT S. cc. LOCAL AGENT: S. AMOUNT S. cc.

SCRUB NURSE: M. Pruskovala RN

CIRCULATING NURSE: R. Donnison RN

SCRUB RELIEF: L. Tootkaran S.T. 1530

CIRCULATING RELIEF: S. Walker RN 1530

SCRUB RELIEF: S.

CIRCULATING RELIEF: S.

PRE-OPERATIVE DIAGNOSIS: DTD. D'Amore

POST-OPERATIVE DIAGNOSIS: D'Amore

WOUND CLASSIFICATION (Check One Only): CLEAN I CLEAN/CONTAMINATED II CONTAMINATED III DIRTY IV

PROCEDURE #1 D. T.K.A.

PROCEDURE #2 Foreign material insertion - Deactivation sponges

PROCEDURE #3 S.

PROCEDURE #4 S.

VOLUME LOSS: S. cc. S.

SPECIMENS: Omentum P. liver

CULTURES/CYTOLGY S.

IMPLANTS: N/A INSERTION REMOVAL CEMENT CARD FILED AUTOCLAVE # LOAD #

TYPE	MANUFACTURER	SITE	SIZE	LOT/SERIAL #	CAT./MODEL #	EXP. DATE
Cement	Howmedica	Plane	40x6x2	RLE558	6191-1-001	9/2000
femoral	Howmedica		59	54415800	5220-02-	
Tibia			59	54859200	5220-02-	
Poly			59x12	40655900	5220-02-03	
Patella			32	14880600	5220-17	

SERVICE:

COUNTS:

PLA	ORT
GYN	GEN VAS
DEN	URO
CT	COS
OPT	POD
NEU	ENT

SHARPS: CORRECT INCORRECTSPONGES: N/A CORRECT INCORRECTINSTRUMENTS: N/A CORRECT INCORRECT

IF CORRECT, WAS X-RAY TAKEN:

 YES NO

RESULT: S.

LASER: YES NOTYPE: CO₂ YAG KTP

LASER NURSE: S.

MINUTES: S.

ENERGY: S.

LASER SAFETY PROTOCOL FOLLOWED

 YES NO IF NO EXPLAIN: S.

~ Fragment "6"

Ev. hit F"

11

OR RN

RN

SAFETY STRAP SECURED LOCATION: <i>Chair</i>		COMMENT:
BODY POSITION: <input type="checkbox"/> JACK KNIFE <input type="checkbox"/> LATERAL <input type="checkbox"/> RIGHT <input type="checkbox"/> LEFT <input type="checkbox"/> GEORGIA PRONE <input type="checkbox"/> LITHOTOMY <input type="checkbox"/> PRONE <input type="checkbox"/> SUPINE <input type="checkbox"/> SEMI-FOWLER'S <input type="checkbox"/> SEMILATERAL <input type="checkbox"/> RIGHT <input type="checkbox"/> LEFT <input type="checkbox"/> OTHER:		
POSITIONING DEVICES: <input type="checkbox"/> ALLEN STIRRUPS <input type="checkbox"/> LATERAL SUPPORT <input type="checkbox"/> KAMBIN'S FRAME <input type="checkbox"/> PILLOWS <input type="checkbox"/> WILSON FRAME <input checked="" type="checkbox"/> CANDY CANE STIRRUPS <input type="checkbox"/> KIDNEY REST <input type="checkbox"/> TRENT ANDREWS FRAME <input type="checkbox"/> VAC PAC <input type="checkbox"/> MAYFIELD FRAME <input type="checkbox"/> SHOULDER SUSPENSION <input type="checkbox"/> LEG REST PILLOW <input type="checkbox"/> BUMP WHERE: <input type="checkbox"/> OTHER: <i>JM Net</i>		
ARM POSITION: <input checked="" type="checkbox"/> RIGHT <input type="checkbox"/> ARMBOARD <input type="checkbox"/> AT SIDE <input type="checkbox"/> FOAM ARM REST <input type="checkbox"/> OTHER: <input checked="" type="checkbox"/> LEFT <input type="checkbox"/> ARMBOARD <input type="checkbox"/> AT SIDE <input type="checkbox"/> FOAM ARM REST <input type="checkbox"/> OTHER:		
EQUIPMENT USED: <input type="checkbox"/> N/A <input type="checkbox"/> NEUROSTAT <input type="checkbox"/> BLANKETROL # <i>0</i> °C <input type="checkbox"/> INSUFFLATOR <input type="checkbox"/> CUSA <i>min</i> <input type="checkbox"/> ORTHO PUMP <input type="checkbox"/> PHACO <input type="checkbox"/> SLUSH MACHINE <input type="checkbox"/> CYSTO EQUIP. <input type="checkbox"/> MICROSCOPE <input type="checkbox"/> PORTABLE X-RAY <input type="checkbox"/> C-ARM <input type="checkbox"/> LAPROSCOPIC EQUIPMENT <input type="checkbox"/> DEFIBRILLATOR <input type="checkbox"/> ANGIOSCOPE <input type="checkbox"/> ARTHROSCOP. EQUIP. <input type="checkbox"/> FX TABLE <input type="checkbox"/> ANTI-EMBOLIC PUMP <input type="checkbox"/> STERIS # <input type="checkbox"/> CAVITRON <input type="checkbox"/> FLASH AUTOCLAVE # <input type="checkbox"/> OTHER: <i>Breath Power</i>		
<input type="checkbox"/> TOURNIQUET: <input type="checkbox"/> PLACEMENT: <i>12 ft thigh</i> APPLIED BY: <i>Millich DO</i> <i>Stryker Eng. Surgical Cervical</i> <input type="checkbox"/> TIME UP: <i>1540</i> TIME DOWN: <i>1604</i> MACHINE #: <i>HED 39017</i> PRESSURE: <i>400 mm Hg</i> <input type="checkbox"/> TIME UP: TIME DOWN: PRESSURE:		
<input type="checkbox"/> ELECTROSURGICAL: <input type="checkbox"/> BIPOLE <input type="checkbox"/> MONOPOLAR ESU #: <i>20A/30cm</i> BIPOLAR #: ABC #: <input type="checkbox"/> PLATE <i>2</i> PLACEMENT <i>(2 thigh)</i> LOT #: <i>AE</i> EXPIRATION DATE: <i>2009/12</i> <input type="checkbox"/> SETTINGS: COAG: <i>75</i> CUTTING: <i>65</i> SKIN CONDITION AFTER REMOVAL:		
OTHER:		
OR RN GENERAL SKIN CONDITION: PRE-OP: <i>Spotted skin/face - hair in areas of body - Abused, red/brown</i> POST-OP: <i>Normal</i>		
SHAVE / PREP: <input type="checkbox"/> NO DYES AREA: <i>W leg</i> SOLUTION: <i>W/leg</i>		SURGICAL SITE PREPPED: <input type="checkbox"/> NO DYES AREA: <i>W leg</i> SOLUTION: <i>Betadine / alcohol</i>
MEDICATIONS: (DOSE/ROUTE/TIME/ADMINISTERED BY)		
MEDICATED IRRIGANT: <i>X2 Sagent / 3750 bacitracin in 1000 cc of NS</i>		
DRAINS: <input type="checkbox"/> NO DYES - TYPE: <i>Medkin orae</i> LOCATION: <i>Pelvis</i> TYPE:		
FOLEY CATHETER: <input type="checkbox"/> NO DYES FR. 10 CC BALLOON INSERTED BY: <i>NAT Inserted</i>		
PACKING: <input type="checkbox"/> NO <input type="checkbox"/> YES - TYPE: LOCATION:		
DRESSING: <i>Adaptic - 4x4 - white</i> <input type="checkbox"/> CAST - TYPE:		
INT TO: <input type="checkbox"/> PACU <input type="checkbox"/> ICU <input type="checkbox"/> ROOM <input type="checkbox"/> OTHER: VIA: <input type="checkbox"/> BED <input type="checkbox"/> STRETCHER <input type="checkbox"/> AMBULATING		
NURSES NOTES: <i>Pt arrived CPA - chemically, warm blanket applied. Crutch assigned. No placement to a bariatricatology. PT to ambulate (Sphincter R/N) Review of D/C request dudde m-derm dressing applied to heel pierce site.</i>		
SIGNATURE		INITIALS
<i>Ruth Verri RN CNR</i>		
OPERATIVE VISIT / EVALUATION:		

**ALLEGHENY
UNIVERSITY HOSPITALS
GRADUATE**

One Graduate Plaza,
1300 Lombard Street
Philadelphia, PA 19146
215.393.3000

OPERATIVE REPORT

PATIENT: COONEY, DANIEL
HISTORY NUMBER: 782873
SURGEON: DRS. BARTOLOZZI/BOOTH
ASSISTANTS:

ANESTHESIA: SPINAL EPIDURAL
ANESTHETIST:

DATE: 02/26/98

PREOPERATIVE DIAGNOSIS: Degenerative joint disease of left knee

POSTOPERATIVE DIAGNOSIS: Same

PROCEDURE: Left total knee arthroplasty

ESTIMATED BLOOD LOSS: 50 cc

TOUNIQUE TIME: 45 minutes

OPERATIVE PROCEDURE: The patient was taken to the operating room and placed in the supine position after the adequate administration of anesthesia. The left knee was prepped and draped in the usual sterile fashion. The extremity was exsanguinated with an Esmarch bandage and the tourniquet was inflated.

A longitudinal midline incision and medial parapatellar arthrotomy were performed. The patella was everted laterally and advanced degenerative changes were seen. The cruciate ligaments were excised and soft tissue releases were performed to restore alignment of the limb. The tibia was subluxed anteriorly and a transverse tibial cut was performed. The tibia was provisionally sized for a 59 Zimmer Insall-Burstein II component. The femoral AP cut was then performed and a 59 x 12 mm block provided excellent stability in flexion. The distal femoral cut was performed with the assistance of a soft tissue tensor and a 59 x 12 mm block provided excellent stability in extension.

The chamfer cuts were performed and a provisional 59 femoral, 59 tibial, 59 x 12 mm tibial spacer, and 32 mm tripegged domical patellar button was placed. The knee was taken through a full range of motion with excellent alignment, stability and patellofemoral tracking. The provisional components were removed and the bone surfaces were further prepared with burrs and pulsatile cleansing. Pressurized cement was used to sequentially secure the femur, tibia, and patella. The knee was placed in full extension, the excess cement was removed and allowed to harden. The knee was reirrigated and closed sequentially over double drains using #1 vicryl capsular sutures, #2-0 vicryl subcucaneous sutures and skin staples. Sterile compression dressings were applied and the tourniquet was released.

The attending physician was present for the key portion of the

Exhibit "4" Exhibit C

COONEY, DANIEL

-2-

782873

procedure including the soft tissue balancing, bone preparation, and prosthesis implantation and was immediately available throughout the entire procedure. The patient tolerated the procedure well and left the operating room in excellent condition.

/TL132/1921
DD:02/26/98
DT:02/27/98


DRS. BARTOLOZZI/BOOTH



BOOTH BARTOLOZZI
BALDESOSTON

Robert E. Booth, Jr., M.D.
Arthur R. Bartolozzi, M.D.
Richard A. Baldesoston, M.D.
Peter F. DeLuca, M.D.
Philip M. Nazarian, M.D.
David G. Nazarian, M.D.



ALLEGHENY
UNIVERSITY HOSPITALS
GRADUATE

THE CATHEDRALIC HOSPITAL
Allegheny University Hospital
Graduate

1500 Lombard Street
Philadelphia, PA 19102
215-893-1222
939-473-4831
215-693-5771 Fax
www.j3Ortho.com

REQUEST FOR MEDICAL AND SURGICAL PROCEDURES

TOTAL JOINT REPLACEMENT CONSENT FORM

PATIENT: Donald Cooney AGE: 80 DATE: 2/12/98 TIME: AM/PM

1) I hereby request and authorize Dr. Booth/Bartolozzi/DeLuca/Nazarian and/or Associates and Assistants to perform upon me (or upon the above named patient), the following operation and/or medical procedures: (List specific nature of operation and procedures to be performed.)

LEFT total Knee Arthroplasty

2) I am aware that the practice of medicine and surgery is not an exact science and results cannot always be anticipated. I acknowledge that no guarantee or assurance has been given to me by anyone as to the results that may be obtained in the operation to be performed upon me and of any medical, surgical or therapeutic procedures in Allegheny University Hospitals, Graduate. I understand that complete restoration of function may not be achieved as a result of this operation or procedure.

3) The nature and purpose of this operation, possible alternative methods of treatment, the risks involved in the surgery and in the administration of anesthesia and the possibility of complications have been fully explained to me and I completely understand them. The significant risks and complications explained to me and which are involved in this procedure include, but are not limited to the following: INFECTION, PHLEBITIS, THROMBOEMBOLISM, SWELLING, DELAYED HEALING, ANESTHESIA RISKS PER ANESTHESIA, CARDIAC EVENT, STROKE, PERSISTENT PAIN, STIFFNESS, INSTABILITY, FRACTURE, NERVE INJURY, NUMBNESS, PARALYSIS, VASCULAR INJURY, BLEEDING, RECURRENCE OF DEFORMITY, LEG LENGTH INEQUALITY, WEAR, LOOSENING, DISLOCATION, AND DEATH.

4) I request the performance of operations and procedures in addition to or different from those now contemplated, whether or not arising from presently unforeseen conditions, which the above named doctor or his associates or assistants may consider necessary or advisable in the course of the operation.

5) I request the administration of such anesthetics as may be considered necessary or advisable by the physician responsible for this service.

6) I consent to the photographing or televising of the operations or procedures to be performed, including appropriate portions of my body, for medical, scientific, or educational purposes, provided my identity is not revealed by the pictures by descriptive texts accompanying them.

7) I hereby request and authorize Dr. BBN to retain, preserve, and use it safe for living persons or to otherwise dispose of the dismembered tissues, parts or organs taken from my body during hospitalization. I also authorize the necessary testing of such tissues, parts, or organs for communicable diseases, including the test for HIV (AIDS virus) antibodies. I understand the results of such testing will remain confidential.

8) This request form extends not only to the doctors to whom I have entrusted my care and others associated with or designated by them, but to Allegheny Graduate and its representatives, and in granting it I intend to assume the risk of possible unforeseen results and to be legally bound.

9) I certify that I have read and fully understand this request form which has been preceded by an explanation by my physician, that the explanations referred to were made by Dr. BBN and are understood by me and I agree not to revoke, limit or alter this request except in writing delivered to my physician prior to commencement of the operation described herein.

Dorothy

Signature of Physician

M. Peetman

Signature of Witness

MSULAP

A.J. Conney

Signature of Patient

Eleanor M. Conney

Signature of Patient's Spouse, if available

When patient is a minor or incompetent to request:

Signature of Person Authorized to Request for Patient

Relationship to Patient

Page 14

1 A. There was a -- according to the record,
 2 there was injury to the intimal lining of the --
 3 or an abnormality essentially in the intimal
 4 lining of the artery.

5 Q. And do you know how that came about?

6 A. No.

7 Q. Did you review also any of the records with
 8 respect to the vascular surgery that was
 9 performed on Mr. Cooney in February '98?

10 A. Yes.

11 Q. Did you review the operative report of the
 12 vascular surgery from Dr. Mantell?

13 A. Yes.

14 Q. Okay. You said you did not review the
 15 arteriograms, the intraoperative arteriograms or
 16 the presurgery arteriograms?

17 A. I did not.

18 Q. Okay. Did you, prior to Mr. Cooney's
 19 orthopaedic surgery, the knee replacement, did
 20 you see Mr. Cooney in your office before surgery?

21 A. I did not.

22 Q. Okay. Who was the physician in your office
 23 who saw -- who saw Mr. Cooney before surgery?

24 A. He had seen both Dr. Booth and
 25 Dr. Nazarian.

1 Q. Okay. Was he seeing Dr. Nazarian for the
 2 anticipated knee replacement, do you know?

3 A. He had been treated by Dr. Nazarian for
 4 another problem.

5 Q. Do you know what that problem was?

6 A. Yes. He had a hip revision surgery.

7 Q. Okay. And Dr. Nazarian was the surgeon in
 8 that surgery?

9 A. As far as I know.

10 Q. Okay. Who was he seeing in your office
 11 with respect to the anticipated knee replacement
 12 or knee surgery?

13 A. I believe he sees Dr. Booth for that.

14 Q. Okay. But you didn't participate in any of
 15 the examinations or treatment with respect to the
 16 knee surgery?

17 A. No.

18 Q. When was the first time that you saw
 19 Mr. Cooney?

20 A. The first time I encountered him was in the
 21 operating area in Graduate Hospital.

22 Q. Okay. Before surgery, before his knee
 23 replacement surgery?

24 A. Yes.

25 Q. Okay. Who was the surgeon for Mr. Cooney

1 for the replacement?

2 MR. O'BRIEN: Objection to the form.

3 THE WITNESS: Well, we operate as a
 4 team with respect to the surgery. The procedure
 5 involves a number of steps that are well
 6 rehearsed and as part of the process, as a team,
 7 we work together and take care of the patients.

8 The attending physician for Mr. Cooney was
 9 Dr. Booth.

10 BY MR. KLEPP:

11 Q. What does it mean to be an attending
 12 physician?

13 A. He primarily evaluated the patient ahead of
 14 time, met with him, discussed the procedures and
 15 is the attending with respect to that surgical
 16 procedure.

17 Q. Is he, I think as Dr. Booth described, the
 18 choreographer of the treatment in the surgical
 19 procedure?

20 MR. O'BRIEN: Objection to the form.

21 THE WITNESS: Well, I don't know the
 22 term "choreographer." We -- he is responsible for
 23 certain aspects of the surgical procedure and we,
 24 as a team, work together in concert to help
 25 provide the patient with the best, you know, care

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Page 16

1 possible and each of us has different experiences
 2 and expertise.

3 BY MR. KLEPP:

4 Q. Who would be the one ultimately responsible
 5 for any decisions that would be made with respect
 6 to the surgery of Mr. Cooney?

7 MR. O'BRIEN: At what point?

8 MR. KLEPP: During the procedure of
 9 the surgery.

10 MR. O'BRIEN: Just at any time during
 11 the surgery?

12 BY MR. KLEPP:

13 Q. Any time a decision has to be made with
 14 respect to the surgery, who is the ultimate
 15 responsible individual?

16 A. Dr. Booth is the -- anything that's out of
 17 the ordinary or would require a decision such as
 18 that would be Dr. Booth's decision.

19 Q. What parts of the surgery did you
 20 participate in Mr. Cooney's surgery?

21 A. The initial part of the surgery involves
 22 applying the drapes and the surgery involves a
 23 applying the drapes, establishing the surgical
 24 field, making an exposure to the knee, beginning
 25 the initial phases of the knee replacement,

17

COONEY VS. BOOTH, ET AL

Condenselt™

ARTHUR R. BARTOLOZZI - 9/22/00

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1 removing bony osteophytes and preparing the bones
 2 themselves for the actual replacement procedure.
 3 Q. That's the part that you participated in?

4 A. Yes.

5 Q. All right. Did anyone assist you or -- did
 6 anyone assist you in performing those roles?

7 A. In this particular case, there was a --
 8 typically, in this case, we had a resident who
 9 was Dr. McHugh and there was a surgical assistant
 10 as well who provides some assistance, a surgical
 11 assistant or physician or a nurse.

12 Q. A doctor?

13 A. No.

14 Q. It's termed surgical assistant?

15 A. Yes.

16 Q. Who was the surgical assistant involved in
 17 this case, if you know?

18 A. I don't recall.

19 Q. Is it in the operative report?

20 A. It may be.

21 MR. O'BRIEN: If you're looking for
 22 the name, it's written somewhere. It's in the --
 23 I believe it would be --

24 BY MR. KLEPP:

25 Q. Would it be -- I'm going to show you the

Page 17

1 A. No.
 2 Q. On the operative record on the line at the
 3 top where "surgeon" is printed, both you and
 4 Dr. Booth are listed as the surgeon; is that
 5 correct?
 6 A. Correct.
 7 Q. Do you know why you and Dr. Booth are
 8 listed as the surgeon on that record?

9 A. We were both involved in the surgery.
 10 Q. Okay. Now, other than the procedure that
 11 you've just described that you were involved in
 12 with respect to Mr. Cooney's operation, were you
 13 involved in any other part of Mr. Cooney's
 14 operation?

15 A. I was involved at the end of the procedure
 16 with the -- with the -- at the end of the
 17 cementation or the part -- cementing of the
 18 parts. The exposure and the area is irrigated
 19 with an antibiotic liquid and then the wound is
 20 closed. The deep issues are closed and then the
 21 skin is closed and then staples are applied.

22 Q. And were you involved in that procedure?
 23 A. Yes.
 24 Q. Was Dr. Booth involved in the operation?
 25 A. His involvement is in soft tissue, ligament

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1 intraoperative record. Is it reflected anywhere
 2 on the intraoperative record?

3 A. Yes.

4 Q. And who is it?

5 A. D. Holmes.

6 Q. Okay. Thank you. Now, since we have the
 7 operative record out, on the operative record,
 8 also you're listed as the surgeon for Mr. Cooney,
 9 do you see that, and there is another doctor
 10 that's listed as the surgeon?

11 A. Yes.

12 Q. Who is the other doctor listed as the
 13 surgeon?

14 A. Dr. McHugh.

15 Q. And then below your name, there's another
 16 person listed as the surgeon.

17 A. I can't read the name, but it's --

18 Q. You can't read the name?

19 A. I'm not familiar with that.

20 Q. Okay. And, in effect, where you said

21 McHugh, is Dr. McHugh listed as first assistant?

22 A. Yes.

23 Q. Okay. Do you know why you were listed as
 24 surgeon along with the other physician whose name
 25 you cannot decipher?

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1 balancing, participating with the bony cuts,
 2 application of trial prosthetic devices that are
 3 the size of the devices that we'll ultimately use
 4 and once the parts are applied and cemented,
 5 he's -- that's the limit of his involvement.

6 Q. During any of your involvement in the
 7 surgery, did you come in contact with the
 8 popliteal artery of Mr. Cooney?

9 A. No, it's well out of the way of the field
 10 and it's not a structure that we see or expose.

11 Q. Is there any risk in a knee replacement
 12 surgery such as Mr. Cooney's to injure the
 13 popliteal artery?

14 A. Yes.

15 Q. And what's the risk?

16 A. There are risks of vascular injury with
 17 knee surgery. Vascular -- there is known
 18 vascular complication or vascular injury that can
 19 occur.

20 Q. What types of injury can occur?

21 A. Arterial lacerations can occur, dislodgment
 22 of plaque lodged in an artery, a clot, thrombus
 23 can occur.

24 Q. What's arterial laceration?

25 A. It's where an artery is lacerated.

18

Dr. Booth - Cross

33

1 Q So you knew about it even as of the time of surgery?

2 A Yes.

3 (Pause.)

4 Q Now, on February 26th you went forward with the surgery
5 on Mr. Cooney; isn't that right?

6 A Yes.

7 Q Let's talk about the surgery. Do you recall, sir, back
8 on April 28th, 1997, your meeting with Mr. Cooney, do you
9 recall him asking you words to the effect, Will you --
10 meaning you Dr. Booth you -- perform or do the knee
11 replacement surgery on me? Do you recall him saying words to
12 that effect to you?

13 A He asked if we would do -- I would do a knee replacement
14 on him, yes.

15 Q If you would?

16 A Yes.

17 Q And he had only met with you as of that moment?

18 A Correct.

19 Q And do you recall telling him words to the effect, Yes,
20 young man, I will do the surgery for you or on you?

21 A Yes.

22 Q So you promised him then that you would do the knee
23 replacement surgery, didn't you?

24 A I told him that I would do --

25 Q Did you promise him then that you would do the knee

Dr. Booth - Cross

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1 replacement? You understand the word "promise"?

2 A Yes, I do.

3 Q Did you promise him, at that time, that you would do the
4 knee replacement surgery?

5 A Yes.

6 Q You didn't tell him, at that time, anything about there
7 being a team approach to this, that I with other people are
8 going to be doing this on you and for you, did you?

9 A Yes, I did, that's absolutely incorrect.

10 Q You have a recollection of that?

11 A It is only a recollection because that is what I tell
12 everybody that I see. And I explained to you in direct
13 testimony exactly what it is I tell people.

14 Q Now, Mr. Cooney was there for your personally to perform
15 that surgery, and he asked you whether you personally would
16 perform that surgery; is that --

17 A He did not ask if I'd personally would perform the
18 surgery. He asked if I would do his knee surgery and I said
19 yes.

20 Q You don't understand that to be requesting that you do it
21 personally?

22 A Nobody can do the operation by themselves, that is --
23 it's an inappropriate question -- and what I tell them, as
24 part of their informed consent, is that we work as a team,
25 there will be several doctors, my partners as well as

Booth - Direct

35

1 Art Bartolozzi is my sports partner, but he's very
2 good with soft tissues, and ligaments, and he takes care of
3 the pro teams. There are a couple of the pro teams here in
4 Philadelphia, and he's very good, and he's taught me a lot
5 about soft tissue balancing.

6 The second level is that we teach fellows and
7 residents, so they're working and they're doing parts of this
8 surgery as well, we're a teaching hospital. And so they need
9 to hear that, and that's all written on the consent forms as
10 well, but, you know, that's part of the way we work, and it's
11 one group that -- that covers the surgery and the after-care
12 together.

13 Q Now, is Dr. Bartolozzi, the name that you mentioned, he
14 was one of the surgeons in the operating room with you and
15 Mr. Cooney?

16 A Yes.

17 Q Is he the team orthopedic physician for the Philadelphia
18 Eagles and the Philadelphia Flyers, both?

19 A The Eagles, the Flyers, the Phantoms, the Kicks, he's
20 overcommitted to sports.

21 Q Okay. To the best of your recollection, when Mr. Cooney
22 and his daughter left on that April visit, were there any
23 questions, do you know, posed to you that went unanswered in
24 any way, shape, or form?

25 A No, I think the only thing I didn't mention is we do say

Booth - Direct

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1 "I hereby" -- which has your name written in -- "I hereby
2 request and authorize Dr." -- and it's not filled in. It
3 says Booth, Bartolozzi, DeLuca, Nazarian.

4 Given that this is a total joint replacement consent
5 form, why is it that unlike the hip form over here, where
6 you're named on them, why is it not on this -- on this -- in
7 this case?

8 A On the hip, what I was trying to take advantage of was
9 Dave Nazarian's specific expertise in doing these hip
10 conversions. As I said, this is not a primary hip, this is a
11 conversion from a hip fracture, which is a slightly different
12 and more complicated operation, which he likes to do and does
13 very well.

14 The knee is something that we do interchangeably,
15 really three of us. Dr. DeLuca really only does -- rarely
16 does total knees, but Dr. Bartolozzi, Dr. Nazarian, and I do
17 the total knees at our institution and we assist each other,
18 do them together, we work in this team fashion that I've
19 tried to explain earlier.

20 So what I want the patients to know, and what they
21 are, indeed, told is that we work as a team. This is the
22 attending physicians, this is the staff doctors, this is not
23 the residents and fellows, this is my partners. And that's
24 what this reflects (indicating).

25 Q And do we know who started the procedure, who initiated

Booth - Direct

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1 the surgical procedure on Mr. Cooney for this left total knee
2 arthroplasty?

3 A Yes, Dr. Bartolozzi.

4 Q Okay. And was he assisted by anyone?

5 A At the beginning by Dr. McHugh, who was a resident from
6 the Allegheny System -- the former Allegheny System.

7 Q Okay. And is there an operative note dictated pursuant
8 to this surgery -- strike that.

9 Is there an operative note dictated after the
10 surgery that was done on Mr. Cooney that day?

11 A Subsequent to it, yes.

12 Q Let me ask you why you, or Dr. Bartolozzi, or Dr. McHugh,
13 did this procedure on a man that is alleged to have
14 peripheral vascular disease sufficiently, allegedly, to
15 warrant an arteriogram or some type of study before the
16 surgery, coupled with an ulcer on the heel, what was it that
17 you found, in treating your patient, that makes you disagree
18 with the contentions that Mr. Klepp's witness was to put
19 forth?

20 A That's a big question, so let me take it systematically.

21 Mr. Cooney -- and I'd like -- and there's been a lot
22 of talk for several days -- I personally believe Mr. Cooney
23 had peripheral vascular disease. I believe that I have it,
24 Dr. Kendrick said you had it, probably all but two or three
25 people on this panel have it by virtue of age. We change as

Booth - Direct

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1 basically a knee replacement. It's a little more
2 complicated than that, but that's essentially --

3 Q Now, given your training and -- incidentally, do you
4 teach surgeons this technique of knee replacement?

5 A Yes.

6 Q And do you write specifically on the -- when I say
7 "write," I mean do you write medically-recognized literature,
8 journals and the like on this specific procedure of knee
9 replacement?

10 A Yes.

11 Q In Mr. Cooney's surgery, what portion of Mr. Cooney's
12 knee surgery involved that procedure, which you've just
13 described for us?

14 A That was what we did to Mr. Cooney.

15 Q All right. And how long does that take -- well,
16 generally speaking, how long did it take, if you know from
17 the records, with respect to Mr. Cooney for you to do that
18 which you just described for us in a couple of minutes?

19 A That was about 45, 50 minutes.

20 Q When you said that Dr. Bartolozzi, you told us earlier,
21 deals with soft tissue, what does that mean?

22 A We sort of, among ourselves, surgeons among ourselves,
23 not my partners, distinguish between hard tissue and bone and
24 soft tissue which is the ligaments. Repairing the cruciate
25 ligaments and other ligaments around the knee is -- is a

Booth - Direct

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1 different art. I don't -- I used to do that years ago, but I
2 don't do that too much anymore. I'm more into the hard
3 tissue, the parts, the bones, et cetera. But we learn from
4 each other. We're not just teaching residents and other
5 doctors, and we actually design these operations for the
6 companies that sells these things around the world, but we
7 learn for ourselves, and so that's Dr. Bartolozzi's gift to
8 me over the years has been a better understanding of
9 balancing the soft tissues.

10 A lot of people when they do knees, especially in
11 this community, put them in and all they care about is
12 getting the parts on the bone correctly, but you can have the
13 parts on the bone and have a knee that's wobbly or giving out
14 because the ligaments aren't balanced properly. So the best
15 total knees are those which not only have the parts properly
16 aligned on the bones, but also restore the soft tissue
17 balance, because as I said, the soft tissues, the ligaments,
18 tendons, and muscles, are what hold it all together and make
19 it move. And if that's not good, then even the most
20 attractive X-ray won't work as a -- as a proper knee.

21 Q And I believe you said that Dr. Bartolozzi is involved in
22 sports medicine?

23 A Yes.

24 Q And deals with more of the tendons and that than you do?

25 A Yes.